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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,374	07/06/2001	Krishnan Kumaran	15-11	4294

7590 08/29/2006

Docket Administrator (Rm. 3J-219)  
Lucent Technologies Inc.  
101 Crawfords Corner Road  
Holmdel, NJ 07733

EXAMINER

DANIEL JR, WILLIE J

ART UNIT PAPER NUMBER

2617

DATE MAILED: 08/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Supplemental Advisory Action

## Advisory Action Before the Filing of an Appeal Brief

Application No.

09/900,374

Applicant(s)

KUMARAN ET AL.

Examiner

Willie J. Daniel, Jr.

Art Unit

2617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 July 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: NONE.  
Claim(s) objected to: NONE.  
Claim(s) rejected: 1-14, 24 and 26-28.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's arguments filed 11 July 2006 have been fully considered but they are not persuasive. The Examiner respectfully disagrees with applicant's arguments as the applied reference(s) provide more than adequate support and to further clarify (see the comments in this section and Final Action mailed on 17 May 2006).

The declaration(s) under 37 CFR 1.132 filed 12 December 2005 (hereinafter Document A) is insufficient to overcome the rejection of claim(s) based upon applied reference "Wireless Simulation and Self-Organizing Spectrum Management" (hereinafter Exhibit A) Borst et al. as combined with the other applied references as set forth in the last Office action because:

In Document A on pg. 1, item 3, applicant (i.e., Borst) admits "...Borst article discloses a process for simulating cellular wireless systems...disclose that a simulation tool W may be used to design and predict performance of a cellular wireless system prior to the system's implementation...". In Document A on pg. 1, item 4, the applicant further admits "...Borst article also describes processes for assigning and updating channel assignments DURING operation of a cellular wireless system, i.e., in an ALREADY implemented system...".

Applicant provides additional statements in Document A items 5 and 6 that are a contradiction of the statements of Document A items 3 and 4 as indicated in the paragraph above. For example, Document A item 5 states, "...Borst article does not however, discloses a process for assigning frequency channels...do not disclose of suggest that the IB-DCA process involves simulating a cellular wireless system during the system's actual operation...". Another example, Document A item 6 states, "...Borst article do not disclose using simulations to produce frequency channel assignment...does not disclose using simulation tool W to produce such frequency channel assignment...". The Examiner respectfully disagrees with applicant's assertions in Document A items 5 and 6.

On page 81, abstract, lines 10-12 of Exhibit A, the algorithm of the simulation tool provides automatic configuration at system initialization, as well as adaptation to system expansion and traffic patterns. The subject matter of Exhibit A further supports that the system collects data to produce, rank, and assign channels to be utilized for communication (see Exhibit A - pg. 82, right col., lines 18-25; pg. 83, right col. lines 5-16, pg. 84, right col., lines 22-31). Also, see Office action mailed on 17 May 2006.

Furthermore, applicant previously submitted a declaration on 07 June 2005 (hereinafter Document B) which clearly did not have any statement(s) indicating such remarks of the declaration Document A. As a result of the declaration Document B, the Examiner provided a reference as further support to simply indicate how well-known such features are to one of ordinary skill in the art.

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

Therefore, in view of the comments above, the Final Action is hereby maintained.

  
ERIKA A. GARY  
PRIMARY EXAMINER